

**Adams, Hope**

**From:** Wessinger-Hill, JoAnne  
**Sent:** Monday, July 26, 2021 11:22 AM  
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**Cc:** PSC\_Contact; Besley, Sharon  
**Subject:** RE: Hearing Exhibit (Cross Examination Exhibit) -- DN 2020-263-E  
**Attachments:** DEC DEP Hanson Cross Exhibit 5.PDF

Parties:

Attached is a copy of the Cross Examination Exhibit of Duke regarding Witness Hanson.

Jo Anne

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**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2020-263-E**

|   |   |                                      |
|---|---|--------------------------------------|
| Cherokee County Cogeneration Partners, LLC, | ) |                                      |
|   | ) |                                      |
|   | ) |                                      |
| Complainant,                                | ) | <b>CHEROKEE COUNTY</b>               |
|   | ) | <b>COGENERATION PARTNERS, LLC'S</b>  |
| v.  | ) | <b>RESPONSES TO DUKE ENERGY</b>      |
|   | ) | <b>CAROLINA, LLC AND DUKE ENERGY</b> |
| Duke Energy Progress, LLC and Duke          | ) | <b>PROGRESS, LLC'S THIRD SET OF</b>  |
| Energy Carolinas, LLC,                      | ) | <b>REQUESTS FOR PRODUCTION OF</b>    |
|   | ) | <b>DOCUMENTS AND</b>                 |
| Respondents.                                | ) | <b>INTERROGATORIES</b>               |
|   | ) |                                      |

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Cherokee County Cogeneration Partners, LLC ("CCCP") hereby responds to Duke Energy Progress, LLC and Duke Energy Carolinas, LLC ("Duke" or "Respondents") Third Set of Requests for Production of Documents and Interrogatories as follows:

**ANSWERS TO THIRD SET OF INTERROGATORIES**

3-1. Please explain in detail and identify the circumstances supporting Witness Hanson's statement at page 10, lines 4-5 of rebuttal testimony that "[i]n fact it was Mr. Keen who suggested DEP had a nearer term capacity need and suggested Cherokee file a LEO with DEP."

**ANSWER:** This was communicated on a phone call where Mr. Keen and Nathan Hanson were discussing the first offer from DEC, as that offer did not include a capacity payment.

3-2. Please identify the total number of Generating Facilities owned or operated by LS Power (or an affiliate or subsidiary of LS Power similar to Cherokee) that are certificated as QFs.

**ANSWER:** Cherokee objects to this interrogatory on the ground that it seeks information that is irrelevant to the issues of this case and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection(s) and without waiving same, as of June 30, 2021, Quattro Solar, LLC, an affiliate of LS Power, owns 25 solar QFs located in 14 states. And, the Facility is a QF.

3-3. Please identify any Generating Facilities owned or operated by LS Power (or an affiliate or subsidiary of LS Power similar to Cherokee) that are certificated as QFs, where the QF Generating Facility's capacity and energy output is sold to more than one utility offtaker under PURPA, as generally discussed on page 10, lines 12-14 of Mr. Hanson's rebuttal testimony.

**ANSWER:** None.

3-4. Please explain what is meant by "the economic regulation of PURPA" as used by Witness Hanson on page 9, lines 9-10 of his rebuttal testimony.

**ANSWER:** That term describes the PURPA oversight over the rates, terms, and conditions of QF contracts, in particular its LEO implementation requirements, as well as the requirement to negotiate in good faith in part by the utility providing support and backup for proposed rates and terms.

3-5. Please explain in detail and identify the circumstances supporting Witness Hanson's statement at page 11, lines 7-9 of rebuttal testimony that "[a]t various times during negotiations, Duke postured that QFs were not eligible to be designated as "network resources" for transmission, and that we would be required to take "point-to-point" service to deliver output to DEP."

**ANSWER:** As set out in Cherokee's Complaint in this Docket, Duke has told

**Cherokee that if Cherokee enters into a negotiated agreement then Duke will treat Cherokee differently than if it enters into an agreement pursuant to PURPA. Specifically, DEP would treat the Cherokee facility as a “network resource,” use its “own transmission rights,” presumably under the Duke Joint Dispatch Agreement and move power from the Cherokee Facility to DEP with no transmission charges being imposed on Cherokee. But, Duke has also advised Cherokee that if it asserts its legal rights and Duke enters into a contract pursuant to PURPA, then Cherokee would need to obtain firm transmission rights to reach DEP, if available, and those transmission charges will be the obligation of Cherokee. Duke further informed Cherokee that Cherokee would be unable to secure firm transmission in order to deliver power to DEP.**

3-6. With respect to Cherokee’s statement made in its Request for Rehearing submitted to FERC on May 3, 2021, in FERC Docket No. ER21-304-002, that “[u]pon expiration of the PPA, Cherokee will indisputably ‘ha[ve] the right to sell to a third party,’ and, in obtaining and maintaining its market-based rate authorization, Cherokee has provided ... ‘manifestation of [Cherokee]’s “plan to sell” output to third parties’ after the termination of the PPA....” please explain how Cherokee’s stated manifestation of its plan to sell output to third parties after the PPA’s termination is consistent with the establishment of a legally enforceable obligation to sell the entirety of its output to DEC.

**ANSWER: Cherokee objects to the interrogatory on the basis that the referenced document speaks for itself. Subject to that objection, and without waiving same, Cherokee provides the following: As the events in this Docket demonstrate clearly, Cherokee has no intention for the “termination of the PPA” between Cherokee and DEC to take place. In fact, Cherokee has sought successfully to extend the term of that PPA twice. Moreover,**

**Cherokee has been seeking to establish a successor PPA with DEC since 2018, and to implement its LEO established on September 17, 2018. In other words, Cherokee has no “plan to sell output to third parties,” because Cherokee “plans” (via a binding commitment) to sell all of its capacity and energy to DEC. Of course, it is conceivable that the PPA could terminate, an outcome assumed by DEC as early as its 2018 IRP. In that event, Cherokee would be forced to sell its output to third parties in the event there was no new contract with DEC.**

3-7. Please identify any utility requests for proposals or solicitations for energy or capacity, other than the 2018 DEP RFP, to which Cherokee has responded since September 2018 with an offer or proposal to sell and deliver the Facility’s output to a utility other than DEC or DEP.

**ANSWER: Cherokee has made no other firm commitments to sell the Facility’s output to any party other than to DEC or DEP.**

3-8. Please identify where in his testimony Witness Snider states that “QFs only establish LEOs once they have begun commercial operation and deliver energy and/or capacity,” as suggested by Cherokee Witness Strunk at page 3, lines 3-5 of his rebuttal testimony.

**ANSWER: Please see page 13 of Mr. Snider’s testimony, lines 8-10, where he states: “it is important that the date on which the LEO is recognized is reasonably aligned with the date on which customers begin receiving (and paying for) the QF power.”**

3-9. Please identify where in his testimony Witness Snider states that “all QFs should have a LEO that is contemporaneous with the initial delivery of energy or capacity under the QF contract,” as suggested by Cherokee Witness Strunk at page 17, lines 5-7 of his rebuttal testimony.

**ANSWER:** Please see page 13 of Mr. Snider's testimony, lines 8-10, where he states: "it is important that the date on which the LEO is recognized is reasonably aligned with the date on which customers begin receiving (and paying for) the QF power."

3-10. Admit that Cherokee first asked for information supporting the October 31, 2018 rates provided by DEC on April 30, 2019.

**ANSWER:** Admitted. However, Cherokee responded to DEC's October 31, 2018 proposed rates on December 7, 2018 by providing DEC with a proposed term sheet for a 7-year extension of the PPA.

3-11. Admit that Cherokee first asked for information supporting the February 1, 2019 rates provided by DEP on April 30, 2019.

**ANSWER:** Admitted.

3-12. Admit that on June 14, 2019, DEC and DEP responded to Cherokee's April 30, 2019 requests for information.

**ANSWER:** Cherokee admits that on June 14, 2019, DEC and DEP provided a two-page letter in response to Cherokee's April 30, 2019 requests for information. However, that letter did not provide the information requested by Cherokee (information regarding the methodology used to calculate the proposed rates and to determine the proposed terms, as well as backup information to support those rates and terms. In other words, DEC and DEP provided a "response," but that document was not responsive to the information sought by Cherokee. As stated previously, the information sought by Cherokee is necessary for Cherokee to verify the inputs and assumptions used by DEC and DEP in calculating the rates it proposed and determining the terms (e.g. contract term) both proposed.

3-13. Admit that after sending the April 30, 2019 requests for information, Cherokee's next communication to DEC or DEP occurred on March 30, 2020, via email by Witness Hanson to David Johnson of Duke Energy.

**ANSWER: Denied.**

3-14. Admit that on August 20, 2020, DEP provided responses to Cherokee's July 20, 2020 request for supplemental information regarding DEP's June 24, 2020 updated avoided cost rates.

**ANSWER: Cherokee admits that on August 20, 2020, DEP provided a three-page letter in response to Cherokee's July 20, 2020 request for information. However, that letter did not provide the information requested by Cherokee (information regarding the methodology used to calculate the proposed rates and to determine the proposed terms, as well as backup information to support those rates and terms. In other words, DEP provided a "response," but that document was not responsive to the information sought by Cherokee. As stated previously, the information sought by Cherokee is necessary for Cherokee to verify the inputs and assumptions used by DEP in calculating the rates it proposed and determining the terms (e.g. contract term) both proposed.**

3-15. Admit that Cherokee initiated no communications or made any other requests for information from DEC or DEP regarding avoided cost rates and terms beyond those summarized in Attachment 1 to the pre-filed direct testimony of DEC/DEP Witness Michael Keen.

**ANSWER: Denied.**

3-16. Admit that Cherokee altered section 3 of the NOC Form, as sent to DEC on September 18, 2019 to remove the requirement that the QF Seller must certify that it has a maximum nameplate capacity of 2 MW and is eligible for the Company's Standard offer tariff.

**ANSWER: Denied as stated. Cherokee adapted the NOC Form because DEC did not have a NOC Form that applied to a QF like Cherokee. DEC knows that the Facility does not have “a maximum nameplate capacity of 2MW,” and knows that the Facility is not “eligible for the Company’s Standard offer tariff.” Accordingly, Cherokee’s adaptation of the NOC Form was consistent not just with the characteristics of the Facility, but the knowledge DEC had of that Facility gained in purchasing energy and capacity from the Facility beginning in 1994.**

3-17. Admit that in the Request for Rehearing filed by Cherokee in FERC Docket No. ER21-304-002 on May 3, 2021, Cherokee stated that:

Upon expiration of the PPA, Cherokee will indisputably “ha[ve] the right to sell to a third party,” and, in obtaining and maintaining its market-based rate authorization, Cherokee has provided any “manifestation of [Cherokee]’s ‘plan to sell’ output to third parties” after the termination of the PPA that might be required to trigger the Commission’s jurisdiction over the LGIA at that time. Moreover, Cherokee expressly cited the option of “making wholesale sales at market-based rates” as a possibility following the expiration of the PPA in its February 1 Response. Notwithstanding the foregoing, the Commission, in the April 2 Order, falsely declared that there is “nothing in the record indicating that Cherokee plans to sell any of its output to a third party.”

**ANSWER: Admitted.**

3-18. Admit that Cherokee has never submitted a request for transmission service to DEP.

**ANSWER: Cherokee admits that it has never submitted a request for transmission service to DEP. As described in Witness Hanson’s Direct and Rebuttal**



Testimony, for network transmission service, it would be DEP- the Network Customer—that would designate Cherokee as a network resource to serve DEP’s network load. Cherokee does not have the ability to unilaterally designate a DEP network resource.

**RESPONSES TO THIRD SET OF  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

3-1. Please produce copies of all Communications made since September 2018 to any other utility, load-serving entity, or power marketer (other than DEC and DEP) that mention the Facility, including but not limited to such Communications that mention the potential for entities other than DEC or DEP to purchase energy or capacity from the Facility.

**Response:** Cherokee objects to this request on the ground that it seeks information that is irrelevant to the issues of this case and is not reasonably calculated to lead to the discovery of admissible evidence. Cherokee further objects to this request on the grounds that it does not describe an item or category of items with reasonable particularity, and is vague and ambiguous. Cherokee further objects to this request on the grounds that it is unduly burdensome and oppressive. Subject to such objections and without waiving same, there are no such Communications that mention the potential for entities other than DEC or DEP to purchase energy or capacity from the Facility.

3-2. Please provide any Documents supporting Witness Hanson’s statement at page 10, lines 4-5 of rebuttal testimony that “[i]n fact it was Mr. Keen who suggested DEP had a nearer term capacity need and suggested Cherokee file a LEO with DEP.”

**Response:** Mr. Keen made the suggestion that DEP had a capacity need in a phone call with Mr. Hanson.

3-3. Please provide any Documents demonstrating that Generating Facilities owned or operated by LS Power (or an affiliate or subsidiary of LS Power similar to Cherokee) that are certificated as QFs are selling the QF Generating Facility's capacity and energy output to more than one utility offtaker under PURPA, as generally discussed on page 10, lines 12-14. Please identify and provide any Documents that support this assertion.

**Response: No such documents exist.**

3-4. Please produce any Documents supporting Witness Hanson's statement at page 11, lines 7-9 of rebuttal testimony that "[a]t various times during negotiations, Duke postured that QFs were not eligible to be designated as "network resources" for transmission, and that we would be required to take "point-to-point" service to deliver output to DEP."

**Response: See answer to Interrogatory 3.5 above. The discussions took place via phone conversation.**

**ADAMS AND REESE, LLP**

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Columbia, South Carolina  
July 15, 2021

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2020-263-E**

Cherokee County Cogeneration Partners, )  
LLC, )  
 )  
Complainant, )  
 )  
v. )  
 )  
Duke Energy Progress, LLC and Duke )  
Energy Carolinas, LLC, )  
 )  
Respondents. )  
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**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day **Cherokee County Cogeneration Partners, LLC's Responses to Duke Energy Progress, LLC and Duke Energy Carolinas, LLC's Third Set of Requests for Production of Documents and Interrogatories** via electronic mail service as follows:

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s/John J. Pringle, Jr.

July 15, 2021  
Columbia, South Carolina